

# *ADMINISTRATIVE ISSUES / UPDATE*

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## *Legislation*

- HB 150 Representative Michael Morley
  - Major Provisions of the Bill

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## Exclusive Remedy

- Gives exclusive remedy to a general contractor if an employee of a subcontractor is injured and the general contractor has a written safety program that includes:
  - Management implantation and maintenance of a safety program
  - Adopting methods to identify, analyze and control new or existing hazards

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- Investigating accidents and implementing corrective action
- Posting the safety and education program at the worksite
- Enforcing the terms of the workplace safety program with the subcontractor

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- The General contractor is to have a written agreement between the general contractor and all the subcontractors for a project which gives the general contractor the right to terminate a subcontractor who does not comply with the safety program

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## Designated Agent

- Each workers' compensation insurance carrier shall maintain a designated agent in Utah
- The agent is to be registered with the division
- The agent is authorized to receive all notices and orders from the Commission on behalf of the insurance carrier/self insured employer

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## Medical Care

- The Commission has exclusive jurisdiction to hear and decide medical issues related to:
  - Compensability for medical services rendered to injured/ill workers, including:
    - *Medical, nurse or hospital services*
    - *Medicines*
    - *Artificial means, appliances and prothesis*

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## Medical Care

The reasonableness of the amounts charged or paid for by the medical services

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## Medical Care

- The Commission has been given the authority to:
  - Adopt medical care treatment protocols by rule
    - The protocols shall be:
      - *Scientifically based*
      - *Peer reviewed*

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## Medical Care

- The Insurance Carrier/Self-insured Employer may:
  - Enter into contracts with:
    - *Health care providers, including hospitals*
    - *Medical review organizations*
    - *Vendors of medical goods, services and supplies, including medicines*
  - The contracts may provide for the discounting of billed amounts for goods and services including hospitals and medicines

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## Medical Care

- The insurance carrier or employer may direct care for the initial visit or hospital care
- After the initial visit the injured worker has the right to choose a treating physician. This includes chiropractic care as a chiropractor is considered a treating physician and does not require a referral from a medical doctor as does treatment by a physical therapist

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## Permanent Total Disability

- Establishes the intent of the legislature to have the employee:
  - Prove that the employee sustained a significant impairment as a result of the industrial injury or illness
  - Prove, by a preponderance of the evidence, that the employee is unable to be gainfully employed due to the industrial injury/illness taking into account the employee's:
    - Age*
    - Experience*
    - Medical Capacity*
    - Residual Functional Capacity*

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## Reporting of Industrial Injuries or Illnesses

- Every employer is required to report a work related injury or illness to the Commission and insurance carrier within seven (7) days of the injury being reported to the employer by an employee who sees a physician
- All physicians, including nurse practitioners, and physician assistants, through the supervising physician are required to report the initial visit to the Commission and insurance carrier within seven (7) days of seeing an employee who reports that the injury or illness is work related
- A hospital is required to report the initial visit if the initial visit was made to a hospital for medical care

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## HB 9 Representative Joseph Murray

- Authorizes the Commission to use up to \$250,000 for two years from the Workplace Safety account for a study of various cancers contracted by firefighters and drug law enforcement officers
  - The study is to be completed by October 15, 2008 and reported to the Business and Labor Legislative Committee by November 31, 2008

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## HB 72 Representative Gordon Snow

- Allows the State to purchase workers' compensation insurance from any licensed insurance carrier or to self-insure after July 2, 2007
- The State, prior to the passage of this legislation, was required to purchase workers' compensation insurance from the Workers' Compensation Fund of Utah

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## Insurance Issues

- Every employer is required to purchase workers' compensation insurance from:
  - A private licensed insurance company
  - The Workers' Compensation Fund of Utah, who is the carrier of last resort, or
  - Self-insure their claims only with permission of the Labor Commission

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## Insurance Issues

- No employer, other than those employers authorized to self-insure through the Labor Commission may pay any of their workers' compensation directly
- No insurance carrier writing workers' compensation insurance in Utah may allow a deductible in which the employer is allowed to pay claims directly up to a certain amount. The policy can only be written to include a reimbursable deductible which is paid by the employer to the insurance carrier after the insurance carrier has paid on a workers' compensation claim

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## Insurance Issues

- The Division is auditing physician reports for any indication that an employer is paying the medical bills directly and not reporting the injury to the division or the insurance carrier. If the division finds that the employer is not reporting injuries, a \$500 penalty may be imposed by the division for each unreported injury. The division will notify the insurance carrier if it finds that an employer is paying medical bills directly, and the insurance department will be notified to review an insurance carrier if it is allowing the employer to knowingly pay claims directly. The insurance department may take further action against an insurance carrier if they are knowingly allowing the employer to pay claims directly

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## Insurance Issues

- This practice is eroding the level playing field for some contractors and other employers who are abiding by the law. It also distorts the true modification rating for an industry if some employers are not reporting injuries as they should or who are hiding injuries by paying the claims directly
- Insurance carriers are also cautioned in writing Accident and Disability (A&D) policies for employers through a captive insurance market as an employer will be deemed uninsured if an insurance carrier has written an A&D policy instead of a workers' compensation insurance policy

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***RULES***

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- **Medical Records Rule R612-2-22**

- The medical records rule was enacted a year ago to conform to the Federal HIPAA rule regarding the privacy of medical records
- The rule allows the insurance carrier/self-insured employer to receive medical information, without the injured worker's authorization for the medical records that are directly related to the claim for benefits that the injured worker has made
- The physician must send the documentation for the visit and services when billing the insurance carrier for payment. This documentation does not require the authorization of the injured worker
- Any previous medical records that are not directly related to the claimed injury or illness require a signed release by the injured worker

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- The insurance carrier/self-insured employer is not entitled to medical records for psychiatric care or care related to the reproductive organs unless that care is related to the industrial injury, otherwise, the carrier or employer must obtain a signed approval by the Industrial Accident Division, or a judge if the case is in Adjudication
- An employer may only receive medical information that is related to restrictions for return to work or a clearance by the physician to return to work

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- **Medical Fee Schedule Rule R612-2-5**

- The Commission will be adopting the 2006 RBRVS, the AMA's 2006 CPT and the Commission's Medical Fee Guidelines on July 1, 2006
- There will not be any increases in the conversion factors for any of the medical specialties
- Some procedure codes have been given a zero value this year as they have not proven to be beneficial in the recovery of the injured worker

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- **Impairment Ratings Rule R612-7**

- The Commission will be adopting an updated version of Utah's Impairment Guides on July 1, 2006
- For all those conditions not found in Utah's Impairment Guides the Fifth Edition of the AMA's Impairment Guides will be used
- Pain is not added in addition to the impairment rating for the specific condition unless there is a separate rating for chronic pain that is warranted and rated separately

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